

Appl. No. 10/582,893
Amdt. Dated November 4, 2009
Reply to Office Action of August 6, 2009

REMARKS/ARGUMENTS

Claims 1, 4, 6-8, and 11 are pending in the current Office Action. Claim 1 has been limited to EGFR as the “abnormally expressed target”. In addition, the vector is required to be a tyrosine kinase having affinity for tyrosine kinase of EGFR. Basis can be found at page 11 lines 1 to 16 and 14, plus page 16 line 14 to page 17 line 3 of the specification. Therefore, the amendment to claim 1 does not add new matter. Applicant respectfully requests that the amendment be entered.

The following remarks, in conjunction with the above amendment, are believed to be fully responsive to the Office Action.

1. Claim Rejections: 35 USC §112.

Claims 1, 4, 6-8 and 11 stand rejected in this regard as claiming subject matter does not complying with the written description requirement.

Applicants respectfully disagree with that analysis. Suitable vectors (V) for EGFR which are kinase inhibitors, are described at page 11 lines 1 to 13; page 16 line 14 to page 17 line 3; plus Example 5 of the specification. Suitable linker groups (L) are described at page 11 line 15 to page 12 line 12, of the specification plus the Examples. Claim 1 has been amended to limit to those specific vectors. Suitable optical reporters R are described in detail at page 12 line 14 to page 13 line 6 of the specification, plus the specific Examples cited

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above. The subject matter of formula I of revised claim 1, i.e. V-L-R is therefore believed to be adequately described to enable the person skilled in the art to reproduce the situation.

Therefore claims 1, 4, 6-8 and 11 are all believed to be in condition for allowance.

2. Claim Rejections: 35 USC §103(a).

2.1. Ke and Cuartero-Plaza.

Claims 1, 4, 6-8 and 11 stand rejected as being obvious over the combination of Ke [Cancer Res. 63 7870-7875 (2003) and Cuartero-Plaza [Clin. Cancer.Res., 2, 13-20 (1996)].

The Examiner suggests that, based on the combination of Ke and Cuartero-Plaza, it would have been obvious for the person skilled in the art to use EGF-Cy5.5 for non-invasive imaging of lung cancer.

Applicants point out that revised claim 1 is now limited to targeting tyrosine kinase of EGFR using kinase inhibitors. Hence, the logical combination of Ke and Cuartero-Plaza actually teaches towards subject matter which is outside the scope of the present claims. The revised claims are therefore believed to be inventive over the combination [Ke + Cuartero-Plaza]. The objection should therefore be withdrawn.

2.2 Weissleder and Kwong.

Claims 1, 4, 6-8 and 11 stand rejected as lacking an inventive step over the combination of Weissleder (US 2003/0044353) and Kwong [Chest 124(4) p. 1979 (2003)].

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Both cited disclosures refer to targeting caspase-3. In the light of the amendments to present claim 1, this objection is now believed moot.

Therefore claims 1, 4-6, 8, and 11 are all believed to be inventive over the cited prior art.

Double Patenting

Claims 1, 4, 6-8, and 11 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting. As indicated in Applicants previous Response a terminal disclaimer will be filed once the instant application is indicated as allowable.

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CONCLUSION

Applicant respectfully holds that the claims submitted herewith fulfill the requirements of a patentable invention and that all rejections and objections be withdrawn and claims 1, 4, 6-8, and 11 be allowed.

The Examiner is invited to telephone the undersigned in order to resolve any issues that might arise and to promote the efficient examination of the current application.

Respectfully submitted,

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